

the rate for level III of the Executive Schedule, except as provided in paragraph (b) of this section.

(b) DHS may establish the maximum annual rate of basic pay for members of the SES at the rate for level II of the Executive Schedule if DHS obtains the certification specified in 5 U.S.C. 5307(d).

§9701.313 Homeland Security Compensation Committee.

(a) DHS will establish a Homeland Security Compensation Committee to provide options and/or recommendations for consideration by the Secretary or designee on strategic compensation matters such as Departmental compensation policies and principles, the annual allocation of funds between market and performance pay adjustments, and the annual adjustment of rate ranges and locality and special rate supplements. The Compensation Committee will consider factors such as turnover, recruitment, and local labor market conditions in providing options and recommendations for consideration by the Secretary. The Secretary's or designee's determination with regard to those options and/or recommendations is final and not subject to further review.

(b) The Compensation Committee will be chaired by the DHS Undersecretary for Management. The Compensation Committee has 14 members, including 4 officials of labor organizations granted national consultation rights (NCR) in accordance with §9701.518(d)(2). An OPM official will serve as an *ex officio* member of the Compensation Committee. DHS will provide technical staff to support the Compensation Committee.

(c) DHS will establish procedures governing the membership and operation of the Compensation Committee.

(d) An individual will be selected by the Chair to facilitate Compensation Committee meetings. The facilitator will be selected from a list of nominees developed jointly by representatives of the Department and NCR labor organizations, the latter acting as a single party, according to procedures and time limits established by implementing directives. Nominees must be known for their integrity, impar-

tiality, and expertise in facilitation and compensation. If the Department and the labor organizations are unable to reach agreement on a joint list of nominees, they will enlist the services of the Federal Mediation and Conciliation Service (FMCS) to assist them. If the parties are unable to reach agreement with FMCS assistance, each party will prepare a list of up to three nominees and provide those separate lists to FMCS; FMCS may add up to three additional nominees. From that combined list of nominees, the Department and the labor organizations, the latter acting as a single party, will alternately strike names from the list until five names remain; those five nominees will be submitted to the Chair for consideration. The Chair may request that the parties develop an additional list of nominees. If the representatives of the Department's NCR labor organizations, acting as a single party, do not participate in developing the list of nominees in accordance with this section, the Chair will select the facilitator.

(e) After considering the views of all Compensation Committee members, the Chair prepares and provides options and/or recommendations to the Secretary or designee. Members may present their views on the final recommendations in writing as part of the final recommendation package. The Secretary or designee will make the final decision and notify the Compensation Committee. This process is not subject to the requirements established by §§9701.512 (regarding conferring on procedures for the exercise of management rights), 9701.517(a)(5) (regarding enforcement of the duty to consult or negotiate), 9701.518 (regarding the duty to bargain, confer, and consult), or 9701.519 (regarding impasse procedures).

(f) The Secretary retains the right to make determinations regarding the annual allocation of funds between market and performance pay adjustments, the annual adjustment of rate ranges and locality and special rate supplements, or any other matter recommended by the Compensation Committee, and to make such determinations effective at any time.